IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 250 of 1999

with

SPECIAL CRIMINAL APPLICATION No 411 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JASUBEN MASHRIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 250 of 1999
MR PRAVIN GONDALIA for MR YOGESH S LAKHANI
for Petitioner
MR BY MANKAD APP for Respondent No. 1
MR BD KARIA for Respondent No. 2

2. Special Criminal ApplicationNo 411 of 1999
MR PRAVIN GONDALIA for MR YOGESH S LAKHANI
for Petitioner
MR BY MANKAD APP for Respondent No. 1
MR BD KARIA for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 09/11/2000

COMMON ORAL JUDGEMENT

As these present two matters are arising from one common judgment dt. 30/1/1999 rendered by the learned Additional Sessions Judge at Jamnagar in two Criminal Revision Application Nos. 77 of 1997 and 83 of 1997, these two matters are decided and disposed of by this common judgment.

2. Here in Criminal Revision Application No. 250 of 1999, minor Jasuben Mashribhai, through her mother Smt. Radhaben Mashribhai Parmar has, under Sec. 397 of the Criminal Procedure Code, 1973, challenged correctness, legality and propriety of the judgment Ex.11 dt. 30/1/1999 rendered by the learned Additional Sessions Judge, Jamnagar (who will be referred to as the learned Judge of the Revisional Court) in Criminal Revision Application No.83 of 1997 which was filed by her father named Mashribhai Meraman Parmar who is a revision opponent no.2 in this present matter.

3. The petitioner -Smt. Radhaben Mashribhai Parmar who is a wife of revision opponent no.2 has, by filing this Special Criminal Application No. 411 of 1999, under Articles 226 and 227 of the Constitution of India, challenged correctness, legality and validity of the judgment Exh. 11 dt. 30/1/1999 rendered by the learned Additional Sessions Judge, Jamnagar (who will also be referred to as the learned Judge of the Revisional Court) in Criminal revision Application No. 77 of 1997 which was filed by her came to be dismissed.

4. The revision petitioner -Jasuben Mashribhai and her mother revision petitioner -Smt. Radhaben Mashribhai Parmar filed maintenance application bearing Criminal Misc. Application No. 1131 of 1995 under Sec.125 of the Criminal Procedure Code, 1973 in the Court of the learned Judicial Magistrate, First Class, Jamnagar (who will be referred to as the learned Magistrate against Mashribhai Meraman Parmar who is revision opponent no.2 in these both matters i.e. Criminal Revision Application No. 250 of 1999 and Special Criminal Application No.411 of 1999.

5. In that Criminal Misc. Application No. 1131 of 1995, before the learned Magistrate, Mashribhai Meraman

Parmar appeared through his advocate and contested that application on merits. Both the parties led their respective evidence in said maintenance application. Thereafter, after hearing the arguments of the learned advocates for both the parties, the learned Judge of the trial Court rendered his judgment dt. 10th March, 1997 in aforesaid maintenance application bearing Criminal Misc. Application No. 1131 of 1995 and by that judgment, maintenance application preferred by Smt. Radhaben Mashribhai Parmar was dismissed and order directing Mashribhai Meraman Parmar to pay maintenance at the rate of Rs.500/- to the present revision application with effect from 18th May, 1995.

6. Being aggrieved against and dissatisfied with the said Judgment Ex.53 dt. 10th March, 1997, rendered in Misc.Criminal Application No. 1131 of 1995, Mashribhai Meraman Parmar preferred Criminal Revision Application No.83 of 1997 to the Sessions Court, Jamnagar. Mother of revision petitioner i.e. Radhaben whose application for maintenance was dismissed, preferred Criminal Revision Application No. 77 of 1997 to the Sessions Court, Jamnagar. Both that revision applications were heard together and by a common judgment dt. 30/1/1999 rendered by the learned Judge of the Revisional Court, by which both the Criminal Revision Applications were finally disposed of. By that judgment, Criminal Revision Application No. 77 of 1997 filed by Radhaben Mashribhai Parmar was dismissed, while Criminal Revision Application No. 83 of 1997 preferred by father of minor was partly allowed, and order of maintenance in favour of minor Jashuben passed by the learned Magistrate was modified by reducing an amount of maintenance from Rs.500/- to Rs.350/- per month with effect from 18th May, 1995.

6. Being aggrieved against and dissatisfied with the said judgment dt. 30/1/1999 of the learned Judge of the Revisional Court who reduced an amount of maintenance, the revision petitioner Jasuben Mashribhai Parmar through her mother has preferred this present Criminal Revision Application No. 250 of 1999.

7. Smt. Radhaben Mashribhai Parmar who is petitioner of Special Criminal Application No. 411 of 1999 had filed maintenance application along with her daughter Jasuben Mashribhai bearing Criminal Misc. Application No. 1131 of 1995 against her husband Mashribhai Meraman Parmar. In that application, husband appeared and contested the case by filing written reply and leading evidence. After appreciating evidence led by both the parties, and after hearing the arguments of the

learned advocates for both parties, the learned Magistrate dismissed the maintenance application filed by Smt. Radhaben Mashribhai Parmar. As against that dismissal of her application, she preferred Criminal Revision Application No. 77 of 1997 to the Sessions Court, Jamnagar. That Criminal Revision Application No. 77 of 1997 came to be dismissed on merits. As there is no provision with regard to second revision, the wife challenged that judgment of the learned Judge of the Revisional Application by filing this Special Criminal Application No.411 of 1999 under Articles 226 and 227 of the Constitution of India.

8. I have heard Shri Pravin Gondalia, the learned advocate for and on behalf of Shri Y.S.Lakhani for wife as well as minor child, Shri B.Y.Mankad, learned APP for the revision opponent no.1 i.e. State, and Shri B.D.Karia, the learned advocate for the husband who is common person i.e. revision opponent no.2 in both the matters. I have gone through the common judgment Ex.53 of learned Magistrate as well as judgment Ex.11 rendered by the learned Judge of the Revisional Court.

9. Shri Pravin Gondalia, the learned advocate for the minor child has argued that initially when the learned Judicial Magistrate, First Class who decided the case passed an order directing father to pay a maintenance at the rate of Rs.500/- per month, but subsequently, when father moved the Sessions Court by preferring Criminal Revision Application No.83 of 1997, the learned Judge of the Revisional Court reduced that amount of maintenance from Rs.500/- to Rs.350/- per month. He has argued that there is no cogent and convincing reason for reducing the amount of maintenance. He has drawn an attention of this Court to Para 12 of the judgment Ex.11 of the Revisional Court, wherein the learned Judge of the Revisional Court has accepted that father is serving as a teacher and in the month of June, 1996, he had drawn a pay of Rs.5,177/-. He has observed that there is a liability on Mashribhai Meraman Parmar for maintenance of married son and daughter, two unmarried children and parents. When son and daughter are already married, it cannot be said that still father is responsible to maintain them. The learned Judge of the Revisional Court has observed that minor girl is aged about 7 years and she is not studying, and she cannot have requirement as of an adult person, and therefore, he has reduced the amount from Rs.500/- to Rs.350/- p.m. Looking to bare necessities for life including food, clothes, medicines, shelter etc. this amount of Rs.350/cannot be said to be a reasonable amount looking

to an amount of income which father is earning. In June, 1996, he was drawing Rs.5,177/-. By now, he must be earning more because of revision of pay of almost all the employees including the teachers. Under the circumstances, an order of reduction of an amount of maintenance is not proper, and it requires to be set aside. In view of this, order with regard to maintenance of a minor child is modified by setting aside an order of learned Judge of the Revision Court, meaning thereby an order of learned Magistrate is hereby confirmed.

10. In view of the fact that this Court has restored an order of the learned Magistrate so far as it relates to maintenance of child, the revision opponent no.2 is liable to pay arrears of maintenance, and therefore, the revision opponent no.2 is liable to pay arrears of maintenance for the period upto 31st October, 2000 at the rate of Rs.500/- per month less already paid by end of 30th April, 2001, and the revision opponent no.2 i.e. father is ordered and directed to continue to pay maintenance to minor Jashuben as directed by this Court hereinabove regularly. In view of what is stated hereinabove, Criminal Revision Application No. 250 of 1999 is allowed accordingly. Rule made absolute to above extent.

11. So far as case of wife i.e. petitioner of Special Criminal Application No. 411 of 1999 is concerned, her petition is indirectly in form of second revision because she lost her case in Criminal Revision Application No. 83 of 1997. There are concurrent and consistent findings of both the courts below for arriving at a decision that wife is not entitled to any maintenance. This petition is in form of second revision which is not maintainable in law. Still however, looking to the fact, that when both the courts below have given concurrent and consistent findings on facts as well as law, this Court is of the view that the judgment of the learned Judge of the Revisional Court is not required to be interfered with, and therefore, Special Criminal Application No. 411 of 1999 filed by the wife is required to be dismissed, and therefore, it is accordingly dismissed. Rule is discharged.

Date: 09-11-2000. (H.H.MEHTA,J.)
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